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Remarks

In response to the Office Action mailed October 20, 2005, Applicant respectfully requests reconsideration. To further the prosecution of this Application, Applicant submits the following remarks, has canceled claims and has added new claims. The claims as now presented are believed to be in allowable condition.

Claims 1-7, 11-15, 19-25, and 29-35 were pending in this Application. By this Amendment, claims 2-3, 20-21 and 30-31 have been canceled. Applicants expressly reserve the right to prosecute at least some of the canceled claims and similar claims in one or more related Applications. Claims 37-38 have been added. Accordingly, claims 1, 4-7, 11-15, 19, 22-25, 29 and 32-35 are now pending in this Application. Claims 1, 11, 19 and 29 are independent claims.

Objections

The Examiner objected to claim 15 due to a typographical error. Claim 15 has been amended to correct the typographical error. Accordingly, the objection to claim 15 is believed to have been overcome.

Rejections under §103

The Examiner rejected claims 1-6, 11-15, 19-24, 29-33 and 35 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,891,802 to Hubbard (hereinafter Hubbard) and U.S. Patent No. 6,137,782 to Sharon et al. (hereinafter Sharon).

Claim 1 has been amended to include the limitations of claim 3, namely that the target is a software component, and to further describe the software component as an object oriented software component. Hubbard and Sharon fail to disclose or suggest that the target is an object oriented software component (e.g. an enterprise java bean (EJB)). With respect to the rejection of claim 3, the Examiner stated that Hubbard discloses wherein a target comprises a software component. Applicants respectfully disagree with the Examiners statement. A

careful review of Hubbard at column 15, lines 27-59 (and Figure 5B) fails to disclose or suggest an object oriented software component. Hubbard discloses providing client systems with a workload task to index a portion of the information accessible on the network. Hubbard fails to disclose or suggest testing of an object oriented software component. Therefore, since claim 1 recites testing of an object oriented software component (e.g. an enterprise java bean or EJB) while Hubbard recites providing client systems with a workload task to index a portion of information on a network, claim 1 is believed allowable over Hubbard. Claims 19 and 29 have been amended in a similar manner as claim 1 and are believed allowable for the same reasons as claim 1.

Regarding claim 11 (and claim 29), the Examiner stated that Hubbard discloses scheduling said first and said second system to monitor said target. Applicants respectfully disagree. Hubbard discloses applying predefined workload units to a remote system. Hubbard does not disclose or suggest monitoring a target. As disclosed in the specification as filed at page 4, lines 12-17, monitoring is used to provide testing of deployed Web Applications in order to detect and report performance problems. The monitoring provided by the systems report failures in real time. The monitor software may provide a variety of notification options and corrective actions to allow the web site owner to quickly resolve any problems. Since Hubbard is dividing a workload into units and submitting the units to particular systems, Hubbard is not concerned with and does not disclose monitoring a remote site in order to detect and report performance problems. Accordingly, claim 11 is believed allowable.

Claims 4-6, 12-15, 22-24 32-33 and 35 depend from claims 1, 11, 19 or 29 and are believed allowable as they depend from a base claim which is believed allowable. Claims 2-3, 20-21 and 30-31 have been canceled. Accordingly, for the reasons stated above, the rejection of claims 1-6, 11-15, 19-24, 29-33 and 35 under 35 U.S.C. §103(a) as being unpatentable over Hubbard and Sharon is believed to have been overcome.

The Examiner rejected claims 7, 25 and 34 under 35 U.S.C. §103(a) as being unpatentable over Hubbard, Sharon and further in view of Mercury (White Paper titled "Load Testing to Predict Web Performance").

Applicants submit that the combination of Mercury with Hubbard and Sharon is impermissible, and the rejection should be withdrawn. It is well-established that both the suggestion to combine the references and the reasonable expectation of success must be found in the prior art, *In re Vaeck*, 20 U.S.P.Q. 2d 1438 (Fed. Cir. 1991). There is no reason to modify Hubbard or Sharon with Mercury absent the hindsight afforded by the claimed invention. "There must be a reason or suggestion in the art for selecting the procedure used, other than knowledge learned from the applicants disclosure." *In re Dow Chemical Co.*, 5 U.S.P.Q. 2d. One of ordinary skill in the art considering Hubbard and Sharon would have no reason to look for means for testing object oriented software components since the Hubbard and Sharon references are dividing workloads and distributing them to respective systems over a network. The Examiner is respectfully requested to withdraw the §103 rejection over Hubbard, Sharon and Mercury. Further, claims 7, 25 and 34 depend from claims 1, 19 and 29 and are believed allowable as they depend from a base claim which is believed allowable. Accordingly, the rejection of claims 7, 25 and 34 under 35 U.S.C. §103(a) as being unpatentable over Hubbard, Sharon and further in view of Mercury is believed to have been overcome.

#### Newly Added Claims

Claims 37-38 have been added and are believed to be in allowable condition. Support for claims 37-38 is provided within the Specification, for example, on page 5, line 14 through line 18. Applicants submit that no new matter has been added by the addition of claims 37-38.

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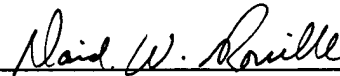
Conclusion

In view of the foregoing remarks, this Application should be in condition for allowance. A Notice to this affect is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicant's Representative at the number below.

Applicant hereby petitions for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 50-3735.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (508) 616-9660, in Westborough, Massachusetts.

Respectfully submitted,



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